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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 1131

STRICK CHAMBERS,

Petitioner,

versus

ROAD DISTRICT NO. 505 OF TANGIPAHOA PARISH, LOUISIANA, ET AL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

MOTION IN RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI ON BEHALF OF ROAD DISTRICT NO. 505 OF TANGIPAHOA PARISH, LOUISIANA

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IN THE

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OCTOBER TERM, 1969

No. 1131

STRICK CHAMBERS,

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versus

ROAD DISTRICT NO. 505 OF TANGIPAHOA PARISH, LOUISIANA, ET AL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

MOTION IN RESPONSE TO APPLICATION FOR WRIT OF CERTIORARI ON BEHALF OF ROAD DISTRICT NO. 505 OF TANGIPAHOA PARISH, LOUISIANA

STATEMENT

The statement of relevant facts contained in appellant's petition under the items "Jurisdiction," "Question Presented,"

"Statutory and Constitutional Provisions Involved," and "Statement" are all hereby adopted, except as herein supplemented and amended.

Road District No. 505, with the Police Jury as its governing authority, is a political subdivision of the State of Louisiana, under the authority of Article XIV, Sections 14(a)[1] and

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[1] § 14. Subdivisions of state; creation; indebtedness; bond issues; special taxes

Section 14. (a) Subdivisions of state listed; indebtedness; bond issues; tax. [As amended by Act 51 of 1926.] Municipal corporations, parishes and school, road, subroad, sewerage, drainage, subdrainage (waterworks and subwaterworks) districts, hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by a vote of a majority in number and amount, of the property taxpayers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity; provided that the governing authority of any municipality which has established and is maintaining and supporting public schools of its own shall not be required to impose and collect such tax upon property included within any territory annexed to the municipality for the retirement of bonded indebtedness incurred by the municipality for school purposes prior to the annexation of such territory. (As amended Acts 1964, No. 561, adopted Nov. 3, 1964.)

(a) [As amended by Act 261 of 1926]. Municipal corporations, parishes and schools, road, subroad, sewerage, drainage and subdrainage districts, and irrigation districts, hereinafter referred to as subdivisions of the State, may incur debt and issue negotiable bonds, when authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the Constitution and laws of this State, who vote at an election held for that purpose after notice published or posted for thirty (30) days in such manner as the Legislature may prescribe, and the governing authorities of such subdivisions shall impose and collect annually, in excess of all other taxes, a tax sufficient to pay the interest annually or semi-annually and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at ma-

14(c)[2] of the Louisiana Constitution of 1921, as supplemented by L.R.S. 48:571.[3]

The Police Jury of Tangipahoa Parish, acting as the governing authority of Road District No. 505 of Tangipahoa Parish, Louisiana, held a special bond and tax election to incur debt and to issue bonds in the sum of $80,000, on June 7, 1969. The election carried by a substantial majority both in the number of voters participating as well as in the total amount of

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turity; provided that the governing authority of any municipality which has established and is maintaining and supporting public schools of its own shall not be required to impose and collect such tax upon property included within any territory annexed to the municipality for the retirement of bonded indebtedness incurred by the municipality for school purposes prior to the annexation of such territory. (As amended Acts 1964, No. 561, adopted Nov. 3, 1964.)

[2] (c). **Road districts, sub-road districts and sewerage districts.** The Legislature may by general law authorize the police juries to create road districts and sub-road districts, composed of territory either wholly within a parish or partly within two or more parishes, and may by general law authorize the police juries to create sewerage districts, composed of territory wholly within a parish, but no sewerage district shall be created comprising the whole territory of a parish; and may by general law authorize municipal corporations to create sewerage districts, whose territory may be less than the territory of the municipality; and may by general law, and within the limitations and conditions herein contained, authorize road districts or sub-road districts so created, through the police jury or juries of the parish or parishes as the governing authority thereof, to incur debt and issue negotiable bonds for the purpose of opening, constructing, improving and maintaining public roads, highways, and bridges in such districts; and may, by general law, and within the limitations and conditions herein contained, authorize sewerage districts, through the governing authority thereof, to incur debt and issue negotiable bonds for the purpose of constructing and maintaining sewers and sewerage disposal works for such districts.

[3] **§ 571. Creation authorized; political subdivision**

Parish governing authorities may create road districts and sub-road districts in the manner and subject to the limitations and restrictions contained in this Part.

Road districts so created are sub-divisions of the State within the meaning of the laws of Louisiana relating to incurring debt and issuing bonds therefor.

assessments involved, and thereafter, on June 10, 1969, these results were promulgated by the Police Jury and were published in the official journal of the District on June 19, 1969.

All of the proceedings in reference to the matter were carried out in compliance with Article XIV, Section 14(a) of the Louisiana Constitution,[1] and L.R.S. 39:501, et seq.[4]

The right to participate in this election was restricted under these provisions to qualified taxpaying electors owning real and personal properties.

Applicant's sole complaint is that he and others similarly situated of his class were deprived of the elective franchise in the said election solely because of their failure to own property subject to taxation, and to pay ad valorem property taxes thereon, and that they are thereby discriminated against in favor of persons who own property subjected to the tax and to pay the taxes required, and that in this respect they were deprived of their rights, privileges and immunities under the Constitution of the United States.

Injunctive relief was sought to prevent issuance of the bonds, and the levying of any tax related thereto.

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[4] **§ 501. Elections**

Except as otherwise provided in special cases, no subdivision may incur any debt, issue any bonds, levy any special tax, or assume any indebtedness unless it has been authorized by vote of a majority in number and amount of the property taxpayers qualified to vote under the Constitution and laws of this state who vote at an election hereunder. The governing authority of any subdivision may call a special election for any of these purposes at any time; and it shall call an election for any of these purposes when requested so to do by the petition in writing of one-fourth of the property taxpayers eligible to vote at the election.

Respondents tendered a plea of peremption or prescription to plaintiff's action arising under Article XIV, Section 14(n) of the Louisiana Constitution,[5] and L.R.S. 39:518.[6]

The local Judicial District Court sustained this plea. The latter decision was affirmed by the Supreme Court of Louisiana in a decision rendered on Monday, December 15, 1969 (rehearing denied). (For copies of the above decisions see

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[5] (n.) **Contest of bond issue or tax; time.** For a period of sixty (60) days from the date of promulgation of the result of any election held under the provisions of this section, any person in interest shall have the right to contest the legality of such election, the bond issue provided for, or the tax authorized, for any cause; after which time no one shall have any cause or right of action to contest the regularity, formality, or legality of said election, tax provision, or bond authorization, for any cause whatsoever. If the validity of any election, special tax or bond issue authorized or provided for, held under the provisions of this section, is not raised within the sixty (60) days herein prescribed, the authority to issue the bonds, the legality thereof and of the taxes necessary to pay the same shall be conclusively presumed, and no court shall have authority to inquire into such matters. The provisions of this section shall not apply to the City of New Orleans.

[6] § 518. **Contests**

For a period of sixty days from the date of promulgation of the result of any election held under the provisions of this Part, any person in interest may contest the legality of the bond issue provided for, the tax authorized or the assumption of debt provided for any cause, after which time, no one may contest the legality, formality or regularity of the election or debt assumption for any cause whatsoever. If the validity of any election is not raised within the sixty days herein prescribed, the authority to issue the bonds, and to levy the tax, or assume the debt and the regularity thereof, shall be conclusively presumed, and no court shall have authority to inquire into such matters.

With reference to Part III (A)[1] of this Chapter, if any resolution adopted or proceeding had more than thirty days after the promulgation of the result of the election, no contest, action or proceeding to question the validity or legality of the resolution or proceeding so adopted shall be begun in any court by any person for any cause whatsoever, after the expiration of thirty days from the date when the resolution was adopted or proceeding had.

Appendix, pages 23 to 44, inclusive, Petition for Writ of Certiorari filed by applicant here.)

SUMMARY

The language of the three-Judge Federal Court in *City of Phoenix, Arizona v. Emily Kolodziejski*, now pending on appeal to this Court, has stymied or deterred the sale of the Tangipahoa bonds and of general obligation or unlimited property tax bonds generally in Louisiana, in Arizona, in Oklahoma, in Idaho, and in many other states for multiple essential public purposes, even though (i) the June 16, 1969 date fixed by this Court in *Joseph Q. Cipriano v. City of, Houma, et al*, 395 U.S. 701; 89 S.Ct. 1897; 23 L.Ed.2d 647, is not applicable; (ii) the reasoning of this Court both in *Cipriano*, supra, and in the companion case of *Kramer v. Union Free School District No. 15*, 395 U.S. 621; 89 Sup.Ct. 1886, 23 L.Ed.2d 583, when interpreted in relationship to the law of Louisiana governing general obligation or property tax bonds will justify this Court in holding that the exclusion of non-taxpaying qualified electors in the Tangipahoa case and in other similar cases are necessary to promote a "compelling state interest," justifying under Louisiana law circumstances limiting the franchise to those primarily interested who are the qualified taxpaying electors; and finally and in any event, (iii) the Tangipahoa bonds and many other issues similarly situated are entitled under the rule of "prospective application" of the *Cipriano* case, supra, and earlier cases to be proceeded with without delay, whatever action this Court may take upon the merits of this case.

ARGUMENT

As to the plea of peremption the Supreme Court of Louisiana in this case made the following observations:

> "The constitutional and statutory provisions relied on by defendants to support their plea of peremption authorize suits to contest the legality of bond and tax elections; but they also establish a peremptive period of sixty days from the date of promulgation of the returns of the election, during which period such suits can be brought. They declare, however, that if no suit is filed within such period of sixty days the legality of the election is conclusively presumed, and no court shall have authority to inquire into the matter.
>
> "The election here involved was conducted in compliance with the Constitution and laws of Louisiana, and the results were promulgated on June 19, 1969. The instant suit was not filed until November 14, 1969, almost five months after the promulgation and three months after the peremptive period had expired.
>
> "The plaintiff in *Andrieux v. East Baton Rouge Parish School Board, et al*, No. 50, 160 of the Docket of this Court, attacked a similar bond and tax election on the same ground as urged by petitioner here. Therein we again reiterated our consistent holding that 'the constitutional and statutory peremptive period operates as a complete extinguishment of the right to attack bond and tax elections,' it prohibiting thereafter a contest over such elections for any cause whatsoever. See also *Gough v. LaSalle Parish School Board*, 210 La. 554, 27 So.2d 330, *Harrel v. Winn Parish School Board*, 214 La. 1095, 39 So.2d 743, *Redmon v. Sub-Sewerage District No. of Sewerage District No. 1, Parish of Jefferson*, 226 La. 245, 75

So.2d 854, and *McLavy v. American Legion Housing Corporation, et al*, 227 La. 300, 79 So.2d 316. (Other cases enunciating the principle are cited in *Andrieux v. East Baton Rouge Parish School Board, et al*, supra.)

"Inasmuch as the present litigation was not commenced within sixty days after the promulgation of the result of the bond and tax election involved herein the trial judge properly sustained defendants' exception of peremption and dismissed the suit."

Subsequent to the Constitution of 1921 and to the decision of the Supreme Court of Louisiana in the case of *Roberts v. Evangeline Parish School Board*, 155 La. 331, 99 So. 289 (1923), the Supreme Court of Louisiana has strictly adhered to the view that Article XIV, Section 14(n)[5] is meant to apply to all cases, including those in which the election is attacked on the basis of the illegality or constitutionality [unconstitutionality] of the statute or ordinances under which it had been called and held.

The Supreme Court of Louisiana as well as this Court at a much earlier time had recognized the validity of the peremptive and prescriptive laws of Louisiana and of other states where a reasonable opportunity to be heard in the courts was afforded the interested citizen under these laws, and where the right to be heard, if not so exercised, was to be forever lost. *Gough v. LaSalle Parish School Board*, 210 La. 554, 27 So.2d 330 (1946); *Davidson v. New Orleans*, 96 U.S. 97.

The petitioner below (applicant here) urges that the rule of these earlier cases was modified by this Court in the *Cipriano* and *Kramer* cases, supra.

As to the latter the Supreme Court of Louisiana in the present case made the following observations:

> "We do not agree with plaintiff's counsel that the rendition of the decisions in *Cipriano v. Houma, et al* and *Kramer v. Union Free School District No. 15, et al*, both supra, by the United States Supreme Court on June 16, 1969, in any manner affects the result reached by us. To the contrary, we think that the language of the court in both cases specifically recognizes that in order for the holdings to apply the suit attacking the validity of the bond and tax election must be brought into the state's peremptive period.
>
> "In the *Cipriano* case, after holding that in some instances the denial of the right to vote to persons situated as this plaintiff might result in the nullity of the election (as it did there). But it said: 'That is, we will apply it **only** where **under state law**, the time for challenging the election result **has not expired**, or in cases brought **within the time specified by state law and which are not yet final.** * * * Incidentally, that suit had been filed within the state's sixty-day peremptive period. (Underscoring ours.)"

As a result of widespread misinterpretation of the *Cipriano* and *Kramer* decisions, recently accentuated, particularly as to Arizona and Louisiana, as a result of the *Phoenix* case, supra (See Opinion, Attorney General of Texas, Exhibit A, attached), presently pending on appeal in this Court, the Police Jury of Tangipahoa Parish, and all the political subdivisions of Louisiana are at the present time faced with a critical emergency in fulfilling existing public construction contracts, and in otherwise performing essential functions in preserving the public health and welfare.

In the *Phoenix* case, supra, a three-Judge Federal Court in Arizona classified the general obligation or property tax bond involved in that case as of the same classification as the Louisiana revenue bond dealt with by this Court in *Cipriano,* supra, and made its decree in that case retroactive to the June 16, 1969 date which was fixed by this Court as in effect a cut-off date for revenue bonds of the same classification.

Respondent is seeking of this Court at the present level an emergency per curiam decree in this case sustaining the ruling of the Court below as to the plea of peremption relied upon.

In evaluating the present record for this purpose respondent respectfully submits that this Court is to consider the long line of cases recognizing the distinction between "voter qualifications" in the election of "public officials," as in the case of *Kramer*, and "voter qualifications" where the business or financial affairs of a municipal corporation are involved, as in the case of *Cipriano.*

One of the earliest cases as to this distinction is *Spitzer v. Village of Fulton*, 64 N.E. 957 (N.Y.—1902). In that case the Court upheld the taxpayer requirement as in accord with good policy where the proposition voted upon related to the business or private affairs of the public corporation, and where it was said that it was necessary to preserve a sound policy and to prevent abuse of the rights of the parties called upon to pay to so restrict the right to vote to the qualified electors of such classification.

At page 598 the Court said this:

> "The established policy of this state has been to limit the right of suffrage as to the business or financial affairs of its various villages to the taxpayers of the municipality, and that it has never been its policy to confide their financial affairs to the general voters therein."

In a Wyoming case, the Supreme Court of Wyoming said that since a political subdivision of any kind had no inherent right to incur debt and to vote bonds for school purposes that the State lawmaking bodies might deem it proper in providing for the incurring of such debts to direct that the added burden is to be undertaken by the elected officials only where the plan is approved by those who must bear the cost. *State v. Johnson County High School*, 5 P.2d 255 (Wyo.—1931).)

The Supreme Court of Nevada in *Carville v. McBride*, 202 Pac. 802 (Nev.—1922), discussing the taxpayer qualification, stated that there is a well-recognized distinction between the governmental or public, and the proprietary or business, powers of a municipal corporation and that the requirement that all qualified electors vote at an election applies only to the governmental or public functions. The Court stated at page 804:

> "The one legislative, public, governmental, in the exercise of which it is a sovereignty and governs its people; the other, proprietary, quasi private, conferred upon it not for the purpose of governing its people, but for the private advantage of the inhabitants of the city and of the city as a legal entity."

The Court upheld the taxpayer qualification as a condition

precedent to the issuance of bonds by the elected officials as being proper and reasonable. When acting and contracting for the private benefit of the city and its inhabitants the Court felt the city may exercise business powers conferred upon it by law in the same way and exercise such powers under the same rules that govern a private individual or corporation.

In the Idaho case of *Hartman v. Meier*, 39 Idaho 261, 227 Pac. 25 (Ida.—1924) (See also, *Muench, et al v. Paine, et al*, No. 10552 on the Docket of the Supreme Court of Idaho, decision rendered by Idaho Supreme Court on January 16, 1970), the question was presented whether the owner of an automobile, who paid no property tax in the municipality, was entitled to vote at a municipal bond election. The Idaho Supreme Court held that the applicable law prohibited such a person from voting because he was not a taxpayer. The Court then went on to discuss what purpose the Legislature was furthering in requiring that electors at bond elections must possess the added qualification of being taxpayers. This Idaho Court recognized that the mere ownership of property had ceased to be considered as a proper element in determining the general right of political suffrage. The question then posed by the Court was whether there is any difference in the exercise of the franchise when voting on whether or not bonds should be issued which would justify the imposition of the added requirement. The Court held that the purpose of the requirement was to **restrict** the issuance of bonds only to those instances where the issuance of the bonds was consented to by those who were to be primarily affected by the burden thereby imposed and undertaken and that any other purpose would be unreasonable and absurd.

Two recent decisions of the Supreme Court of Oklahoma

are relevant here, *Settle v. City of Muskogee*, No. 43,842 and *Settle v. Board of Commissioners of County of Muskogee*, No. 43,812 (both decided December 23, 1969). In these cases the Constitution of the State limited voting in tax bond elections to qualified taxpaying voters. The decisions were unanimous and were rendered subsequent to the *Kramer* and the *Cipriano* cases. The Court made the following observations:

> "* * * We construe *Kramer* and *Cipriano* to hold that a statute or a state constitutional provision having a voter classification restricting the right to vote to one class, thus denying it to another class, is not violative of the equal protection clause (1) where the exclusions are necessary to promote a compelling state interest, and (2) where those excluded are in fact substantially less interested or affected than those included. We also consider the question of whether the classification . . . limits the franchise to those voters 'primarily interested.' "

The Court observed that by providing for a taxpayers' bond election which in effect authorizes the creation of an indebtedness in excess of that otherwise authorized, such classification virtually assured the solvency of Oklahoma's cities and towns, "and the taxpayers are given protection against confiscatory taxes."

The Court went on to say:

> "This conclusion is justified, because the power to authorize the city to incur unlimited indebtedness for public utility purposes is placed in the hands of those persons who pay the indebtedness and who have knowledge of the municipality's capability of satisfying its in-

debtedness from the proceeds of a special tax on their property. These are the compelling State interests.

"We now turn to the question of whether the plaintiff and other persons excluded from voting by reason of not being taxpayers are substantially less interested or affected than those persons permitted to vote. In discussing this proposition in *Kramer* the court treated it as a part of the 'compelling state interest' test. This is our construction of the *Kramer* decision.

"Defendants admit that plaintiff is to some extent 'interested,' and we can conceive that plaintiff could be 'affected' in some degree by reason of the city incurring indebtedness and levying a tax on property to finance a public utility (in this case a library), even though plaintiff is not a taxpayer. However, we are of the opinion that in the present situation the plaintiff is substantially less interested or affected than those persons permitted to vote in the election. Our prior discussion regarding 'compelling state interest' supports this conclusion.

"We point out that this is not an election for the selection of a person for a public office, whose official acts involve legislative or executive duties of a discretionary nature. The election is to incur municipal indebtedness, and the result thereof and the law control the later action to be taken relative to the subject matter. We emphasize that this is an election under a constitutional provision authorizing an indebtedness in excess of the maximum amount the general electorate may approve. It is to be satisfied by a tax paid by property taxpayers who are primarily interested or affected by reason of an increase in the city's debt and their taxes. Plaintiff does not pay any tax. His resulting detriment or expense, if any, arising from the higher tax level, is a proportionate part of the relatively small additional expense spread

across the population of the city. The extent to which plaintiff is interested or affected is indirect and remote.

"It is our conclusion that Art. 10, §27, Oklahoma Constitution, complies with the test requirements set forth in *Kramer* and *Cipriano*.

"It is our further conclusion that Art. 10, §27, validly limits voting to those persons 'primarily interested.' "

Thus, it would seem rather clear that the present case must be distinguished from the specific political issue that was involved in the *Kramer* case, and that the Court here must apply the traditional presumption of constitutionality afforded to state laws which provide rational classifications.

This Court has often held that the states have broad powers to make such classifications in the governmental and proprietary field as long as the distinction is a rational one.

In *Avery v. Midland County*, 390 U.S. 474 at 484 (1968), for example, the Court said this:

"While a state has broad power when it comes to making classifications (cases cited) it may not draw a line which constitutes an invidious discrimination against a particular class (case cited). Though the test has been variously stated, the end result is whether the line drawn is a rational one."

The test has been aptly stated to be that a legislative classification is invalid only ". . . if the classification rests on grounds wholly irrelevant to achievement of the State's objective." *Levy v. Louisiana*, 391 U.S. 68 (1968); Id. at 71; See also *Avery v. Midland County*, supra; *McGowan v. Maryland*,

366 U.S. 420, 425 (1960); *Kotch v. Board of River Port Pilot Comm'rs.*, 330 U.S. 552, 556 (1946); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

As stated in *Williams v. Rhodes*, supra, ". . . we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and interests of those who are disadvantaged by the classification."

A. Sutherland, *Constitutionalism in America* 508 (1965), put it like this:

> "In all the cases emerges the basic proposition that a majority of the human beings concerned will determine their political and economic fate."

To apply this test in any practical, workable manner, it is submitted that at least in law in a case like the present only the qualified taxpaying electors who are directly affected by the election results are concerned.

If this is what the Constitution anticipates in protecting the qualified taxpaying elector, it necessarily means that those who are not directly affected must be excluded, and this is the compelling state interest.

In Road District No. 505 of Tangipahoa Parish, and in other political subdivisions of Louisiana, the qualified voters who are non-property taxpayers as a group have a strong voice in any election and could conceivably determine the outcome of any election, including the outcome of the election directly involved here.

To allow these non-property taxpayers who are not directly concerned to determine the burden of taxation by putting this burden on the property taxpayers would be to allow one class of citizens not subject to the tax to place the burden directly on the class which is subject to the tax. This would be the reverse of equal protection and due process of law.

Thus, it would seem, assuming that such might be the case, the constitutional principles relied upon here by the appellant find the "shoe on the other foot" where if anyone is to complain as to violation of the State's compelling interest, it would be the qualified taxpaying electors.

In the *Kramer* case, supra, where the right of a man to vote in a **political election** was the question presented the Court said this:

> " 'In determining whether or not a state law violates the Equal Protection Clause, we must consider the facts and circumstances of the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.' *Williams v. Rhodes*, 393 U.S. 23, 30 (1968). And, in this case, we must give the statute a close and exacting examination. '[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and **political rights,** any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.' *Reynolds v. Sims*, 377 U.S., 533, 562 (1964). See *Williams v. Rhodes*, supra, at 31; *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). This careful examination is necessary because statutes distributing the franchise constitute the foundation of our rep-

resentative society. **Any unjustified discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government."** (Emphasis supplied)

In *Cipriano*, on the other hand, where the Court was dealing with an issue of invidious discrimination as to a **strictly State proprietary function,** that of the right of a state subdivision to incur debt and to issue bonds to provide a power utility service, the Court went to great length to show that "arbitrary discrimination" was involved of a kind that infringed the complainant's right under the Fourteenth Amendment, as that constitutional principle has been applied in one way or another since the Fourteenth Amendment was first adopted.

Under the facts found in that case there was indeed no justification whatever to deny the franchise to a qualified elector where he was as substantially affected and directly interested in the matter voted upon as the qualified taxpaying electors who were permitted to vote.

As to this the Court made this statement:

"* * * Assuming *arguendo* that a State might, in some circumstances, constitutionally limit the franchise to qualified voters who are also 'specially interested' in the election, whether the statute allegedly so limiting the franchise denies equal protection of the laws to those otherwise qualified voters who are excluded depends on 'whether all those excluded are in fact substantially less interested or affected than those the statute includes.' Id., at 11.

"At the time of the election, only about 40% of the city's registered voters were property taxpayers. Of

course, the operation of the utility system—gas, water, and electric—affects virtually every resident of the city, nonproperty owners as well as property owners. All users pay utility bills, and the rates may be affected substantially by the amount of revenue bonds outstanding. Certainly property owners are not alone in feeling the impact of bad utility service or high rates, or in reaping the benefits of good service and low rates.

"The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like nonproperty owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike"

Plainly in *Cipriano* it was not unreasonable for this Court to so define and to declare the invalidity of the election in preserving the century-old principle protecting citizens against any form of unwarranted discrimination, or in denying such citizens equal protection and due process of law.

Even so, in that case the Court applied the doctrine of nonretroactivity, and it seems little short of "out in left field" for anyone to suggest that the cut-off date fixed there, June 16, 1969, is to be applied to the Louisiana property bond here involved, **or to argue that such cut-off date is applicable to a wide variety of other types of property bonds all involving State business and proprietary functions where there is or may be a "rational basis for reasonable classification."**

Stimulated by what we respectfully submit is a misinter-

pretation of the *Cipriano* decision, there are a great many cases now pending in the courts of the Nation, both State and Federal, in which relying upon that case the validity and constitutionality of ad valorem bonds are being challenged, as if all types of property bonds were not only invalidated thereby, but that this invalidity attaches to such bonds where the authorization to issue was not legally complete without contest on June 16, 1969.

The governing distinction shown in the multiple authorities cited is being completely overlooked, and the doctrine of *Reynolds v. Sims*, supra, and a succeeding line of kindred cases is being arbitrarily applied.

In the pending cases the distinction between *Kramer* and *Cipriano* in this respect is being in some instances completely ignored, and the contention is being made that the *Kramer* and *Cipriano* decisions are merely extensions of the precedents established by this Court in the *Reynolds* case, supra, and in *Harper v. Virginia Board of Elections*, 383 U.S. 663; 86 S.Ct. 1079 (1966), and in *Louisiana v. United States*, 380 U.S. 145, and in *Gray v. Sanders*, 372 U.S. 368 (1963), and in other similar cases where the strictly "political issue" was presented.

In the said *Phoenix* case, supra, the decision by the three-judge court was based on a stipulation of fact strongly indicative of a desire on the part of all litigants to show that there was no compelling state interest that would justify any distinction under the law of Arizona between a "general obligation" bond (or a property bond), and a "revenue" bond, such as was involved in the *Cipriano* case, supra.

The three-judge court below in the *Phoenix* case, supra, found as follows:

"As in *Cipriano*, supra, we find the challenged Constitutional provisions and the challenged Statutes under which the election was held to contain 'a classification which excludes otherwise qualified voters, who are as substantially affected and directly interested in the matters voted upon as those permitted to vote.' **There was no evidence before this Court which would justify the conclusion that the exclusions under Arizona law are necessary to promote a compelling State interest. Moreover, in the instant case we find no evidence which would justify a distinction between Revenue Bonds and General Obligation Bonds.**" (Emphasis supplied)

The Court thus concluded its decision as follows:

"In *Cipriano*, supra, in order to avoid significant hardships on cities' bondholders and others, the Court held the rule of that case would be applied prospectively, 'only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision.'

"In the instant case the authorization to issue the securities was not legally complete by June 16, 1969, (the date of the *Cipriano* decision) nor had the time expired within which the election could have been contested. In the instant case we find the Arizona Constitutional and Statutory exclusions involved in the election called by the City of Phoenix and held June 10, 1969, to be violative of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States."

Accordingly, the Arizona three-judge court invalidated

the so-called property bond laws of Arizona and denied "prospective" relief by applying the June 16, 1969 date of the *Cipriano* decree as the cut-off date.

Since these abstract stipulated statements are not explained by the Court, in effect the Arizona decision relying directly upon the Louisiana *Cipriano* case establishes at least the plain implication that in the view of the Arizona court the doctrine of the *Cipriano* case is to be applied to general obligation or property tax bonds in Louisiana as of June 16, 1969, the date of the *Cipriano* decree. It is presently being so interpreted.

To demonstrate the absurdity of any such conclusion insofar as Louisiana property tax bonds are concerned the Court need go no further than the vast distinction between a Louisiana revenue bond (such as was involved in the *Cipriano* case) and a Louisiana property tax bond, such as is involved here.

In the present case the property tax bond was voted upon the authority of Article XIV, Section 14(a)[1] and Article XIV, Section 14(c)[2] of the Louisiana Constitution, and L.R.S. 48:571,[3] et seq.

Cipriano makes reference in the body of the opinion and in the Court's footnotes to the Louisiana law under which the strictly revenue Bonds in that case were voted; Article XIV, Section 14(m) of the Louisiana Constitution, and Sections 4251, et seq., of Title 33 of the Louisiana Revised Statutes of 1950.

As to revenue bonds Article XIV, Section 14(m) provides in part as follows:

> "(m). **Revenue bonds; acquisition, etc., of utilities.** For the purpose of constructing, acquiring, extending or improving any revenue-producing public utility, the Legislature may authorize municipal corporations to issue bonds secured exclusively, principal and interest, by mortgage on the lands, buildings, machinery and equipment and by pledge of the income and revenues of such public utility. Such bonds shall not be a charge upon the other income and revenues of the municipality and shall not be included in computing the indebtedness of the municipality for the purpose of any limitation herein";

and in L.R.S. 33:4253, it is shown that such revenue Bonds are "to be payable from and secured by the pledge of the revenues derived from the operation of the utility constructed, acquired, extended and improved with the proceeds thereof, subject only to the prior payment of the reasonable, necessary expenses of operating and maintaining the utility."

Per contra, as to the Tangipahoa property tax bonds here involved there is no limit to either the dollar amount of taxes or millage which may be levied against property taxpayers for payment of principal and interest as well as other reserve requirements. The bonds are secured by "unlimited ad valorem taxation," as the relevant constitutional and statutory provisions show.[1, 2, 3]

It is submitted that the State of Louisiana's objective in protecting the taxpayer by imposing some reasonable limit on the voting of the property tax is legitimate, and that the

classification of voters made by the State in this respect is wholly relevant to achievement of this objective, and is fully justified.

It is to be noted that this basic concept of the provisions of the Louisiana Constitution [Article XIV, Section 14(a)],[1] limiting the voting in property tax bond elections to property taxpayers first appeared in the Louisiana Constitution of 1898, and has been retained in Louisiana's Constitution since that time.

Article XIV, Section 14(a) of the Louisiana Constitution[1] which authorizes general obligation bonds empowers the governing authorities of subdivisions of the State in connection therewith to "impose and collect annually in excess of all other taxes a tax sufficient to pay the interest annually, or semi-annually, and the principal falling due each year, or such amount as may be required for any sinking fund necessary to retire said bonds at maturity."

Further, special tax necessary to meet debt service requirements are separately levied, collected, deposited, and paid out in a fund that can not be legally diverted to any other purpose, and no commingling of tax money with other general fund money is permitted; and the taxpaying voters primarily interested are exclusively subject to the payment of all the taxes required, and to the seizure and sale of their property if the taxes are not paid.

To further confound the present confusion as to *Cipriano* consider also the distinction between the law and the facts governing the so-called ad valorem bonds involved in the

Phoenix case, supra, and the law and the facts governing the ad valorem bonds involved in the present Louisiana case.

Unlike the Arizona case, the provisions of Louisiana law pertaining to the subject of ad valorem taxes such as are here involved provide that "all properties situated within the state . . . shall be subject to taxation. . . ." (L.R.S. 47:1951),[7] and the definition includes both movable and immovable property, real and personal property. Each taxpayer is required to fill out a list to the Parish Assessor on or before the 1st day of April of each year (L.R.S. 47:1956).[8]

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[7] **§ 1951. Property subject to ad valorem taxation**

All property situated within the state, except such as is expressly exempted from taxation by law, shall be subject to taxation on the basis of the assessed valuation thereof.

Property, not otherwise exempt from taxation, of all nonresident persons, firms, corporations, partnerships, associations, or companies is hereby declared subject to assessment and taxation, in the same manner as all other property in the state.

Notes, judgments, accounts, and credits of non-resident persons, firms, corporations, partnerships, associations, or companies doing business in the state, originating from the business done in this state, are property with its situs within this state; provided this paragraph shall not affect the levying, assessing, and collecting of taxes upon fire, life, or other insurance companies.

[8] **§ 1956. Preparation, distribution, and return of blank forms for listing and assessing property**

The tax commission may require the assessors to make up assessment lists in a formal manner and according to a method to be prescribed by it. In such assessment lists it may require the separate valuations of improved and unimproved property and the improvements thereon. The tax commission shall, before the first day of January of each year, prepare and have printed the blank forms prescribed for the listing and assessing of property, the parish of Orleans excepted. The tax commission shall furnish to each assessor throughout the state such quantity of such printed forms as will suffice to secure the listing of all property subject to taxation. In the parish of Orleans, the tax commission shall furnish such forms as may be requested by the board of assessors and approved by the tax commission.

On the other hand, the stipulation of fact relied upon by the three-judge court in the *Phoenix* case, supra, establishes the fact that the plaintiff there paid "excise" taxes to the City of Phoenix on all items purchased within the said City of Phoenix that were subject to such excise taxes, and that these excise taxes were commingled with a general fund out of which the City of Phoenix annually and historically paid the debt service, when due, upon its general obligation bonds, including the bonds voted upon, and that for the fiscal year 1969-1970 only $2,350,000 of the annual general obligation debt service requirement of $5,594,973 was to be paid by levy of ad valorem property taxes, and the remaining $3,244,773 was to be paid from other sources, including the excise taxes.

We quote from the stipulation of fact the following:

> "* * * The ratio between real property tax collections and other source monies is representative of the recent years' apportionments for debt service on general obligation bonds. Plaintiff directly contributes to all funds raised from sources other than real property taxes, and plaintiff is derivatively affected by the levy of a real property tax insofar as it affects the cost of goods and services."

Each taxpayer, the parish of Orleans excepted, shall fill out a list of his property and make oath to its correctness, in the manner and form prescribed by law and return such list to the assessor on or before the first day of April of each year. In the parish of Orleans, each taxpayer shall return a list of his property, duly sworn to, within twenty days after the form for such purpose shall have been left at his domicile or place of business. Each tax assessor, in person or by a duly qualified deputy, is authorized to administer oaths or affirmations in the manner required by law for administering oaths. Any wilful mis-statement to the assessor, or any authorized deputy, made under oath, shall be considered and punished as false swearing, as provided by the laws of this state in other cases. As amended Acts 1952, No. 71 § 1.

Further, under Article VII, Section 13 of the Constitution of Arizona (see Appendix A to appellant's pleadings filed herein) questions upon bond issues, or special assessments are submitted to the vote of only **"real property taxpayers,"** rather than the vote of the **taxpayers otherwise directly subjected to the tax under the plan,** and since all of these taxes went into the general fund of the City of Phoenix, out of which the general obligations were paid, plaintiff or members of his "class" also paid **ad valorem taxes levied upon personal property, and/or incorporeal rights in addition to the excise taxes which the "class" was admittedly paying.**

In view of these vital distinctions between the Louisiana law and the Arizona law, in estimating the "compelling state interest" in Louisiana it becomes important that the decision of the three-judge court as written should not be left without a more detailed explanation of what the Court was talking about when it said that there was no evidence before the Court that justified the conclusion the "exclusions under Arizona law were necessary to promote a compelling state interest," and furthermore, that they did not find "facts which would justify a distinction between revenue bonds and general obligation bonds under the laws of that state."

Largely as a result of the three-judge ruling in the Arizona case the stability and integrity of millions of dollars of ad valorem bonds heretofore issued under Louisiana law restricting voting to property taxpayers who are also registered voters as well as millions of dollars of bonds which have been voted at elections and are as yet unsold, and where the sixty-day prescriptive period has accrued without contest under Article XIV, Section 14(n) of the Louisiana Constitution[5] are

being denied a market outlet. These include the farm-to-market roads that are involved directly in this case as well as millions of dollars in school bonds for essential improvements so vitally important at this time, and multiple other issues related to the public health and welfare; as to the latter in cases where there is or may be some Federal participation because of the importance of the project to the public health and welfare.

This Court in some instances applying the "reasonable prescriptive laws" of the states, and in other instances applying the equitable doctrine of non-retroactivity without regard to such prescriptive laws has recognized that in appropriate cases the Court may in any event in the interest of justice make its ruling "prospective." Such doctrine would seem indispensable to avoid unreasonable and undue hardships where the State debt and State financial obligations are involved. *Cipriano v. City of Houma*, supra; *Linkletter v. Walker*, 381 U.S. 618 (1965); *Chicot County Drainage District v. Baxter State Bank*, 308 U.S. 371 (1940); *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932).

The earlier case of *Linkletter v. Walker*, supra, involves an exhaustive discussion of the doctrine of "prospective overruling" in a well-reasoned opinion involving equitable principles that would seem to be governing in cases of this kind. We quote from that decision the following:

* * *

> "While the cases discussed above deal with the invalidity of statutes or the effect of a decision overturning long-established common law rules, there seems to be no impediment—constitutional or philosophical—to the use of

the same rule in the constitutional area where the exigencies of the situation require such an application. It is true that heretofore, without discussion, we have applied new constitutional rules to cases finalized before the promulgation of the rule. Petitioner contends that our method of resolving those prior cases demonstrates that an absolute rule of retroaction prevails in the area of constitutional adjudication. However, we believe that the Constitution neither prohibits nor requires retrospective effect.

* * *

"We believe that the existence of the Wolf doctrine prior to Mapp is 'an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration.' *Chicot County Drainage District v. Baxter State Bank*, supra, 308 U.S. at 374, 84 L. Ed. at 332. The thousands of cases that were finally decided on Wolf cannot be obliterated. The 'particular conduct, private and official,' must be considered. Here 'prior determinations deemed to have finality and acted upon accordingly' have 'become vested.' "

The position of Louisiana in respect to "non-retroactivity" is greatly fortified here where in Article XIV, Section 14(n)[5] the right to contest any such bond election, whether property or revenue is recognized, and the reasonable period of sixty days is provided within which such contest may be filed; further, in the fact that Article XIV, Section 14(n)[5] is more than a law of prescription, but rather is a law of peremption that denies the right to any court to "thereafter inquire into such matters." See, also, *Hobbs v. Police Jury of Morehouse Parish et al* (three-Judge Federal Court) Civil Action No. 14,836, United States District Court for the Western District of Louisiana, decided January 23, 1970.

Fortunately, too, in this case this Court in the *Cipriano* case, supra, in respect to the revenue bonds there involved made the following observations:

> "* * * Where a decision of this Court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity. *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 386 (1932). See *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940). Cf. *Linkletter v. Walker*, 381 U.S. 618 (1965). * * *
>
> * * *
>
> "* * * Therefore, we will apply our decision in this case prospectively. That is, we will apply it only where, under state law, the time for challenging the election result has not expired, or in cases brought within the time specified by state law for challenging the election and which are not yet final. Thus, the decision will not apply where the authorization to issue the securities is legally complete on the date of this decision. Of course, our decision will not affect the validity of securities which have been sold or issued prior to this decision and pursuant to such final authorization."

If equity is what is governing here, it would hardly seem necessary to say that in any case that may hereafter come before this Court involving a State property bond the same equitable doctrine is to be applied unless such bond is manifestly of a category of similar State bonds where the Court has previously found invidious discrimination.

In view of the wide variety of state laws it is reasonable to assume that this Court in applying a "close and exacting

examination" of a State Statute where a "political right," or a "right to participate in political affairs" is involved, as in *Kramer*, and/or where a governmental, proprietary right is involved, as in *Cipriano*, will give close scrutiny to the laws of each state in preserving and protecting the State's compelling interest, justifying where a new situation is presented the application of the doctrine of non-retroactivity to any succeeding case where there is substantial distinction in the State law under consideration.

The rule of "rational classification" involved in the present case is, of course, to be in accord with the compelling state interest which was reiterated by this Court in the *Cipriano* case. This Court is thus called upon to examine the constitutional and statutory law of each of the States as to the right of State political subdivisions to incur debt and to issue bonds of one kind or another in providing the needs of the essential State purposes.

Certainly there is no one decision of this Court, say, in the *Phoenix* case, or in this case, that could begin to achieve this end.

The very complexity of all of this and the time that would be required to achieve it makes it even more imperative that the equitable doctrine of non-retroactivity is to be applied to each case where there is any substantial variation in the State law.

In many of the political subdivisions of this State, including the cities, vital public improvements of all kinds are being delayed where in some cases construction contracts are now being carried out, and where such delays will involve incalcu-

lable loss both in public values and in money, unless this issue is immediately clarified. Apparently, too, this same situation has developed in Arizona, in Oklahoma, in Idaho, and in many other states.

CONCLUSION

We are confronted here with the language of the three-judge decision in the City of Phoenix case, the effect of which is to stymie or deter the sale of the Tangipahoa bonds and of property tax bonds generally in Louisiana, and in other States, for multiple essential public purposes, even though (i) the June 16th date fixed by this Court in the *Cipriano* case, supra, is not applicable (ii) the reasoning of this Court both in *Cipriano*, supra, and in the companion case of *Kramer v. Union Free School District No. 15*, supra, when interpreted in relationship to the law of Louisiana governing general obligation bonds will justify this Court in holding that the exclusion of non-taxpaying qualified electors in the Tangipahoa case are necessary to promote a compelling State interest justifying under Louisiana law circumstances limiting the franchise to those primarily interested, who are the qualified taxpaying electors, and finally and in any event, (iii) the Tangipahoa bonds and many other issues similarly situated are entitled under the rule of "prospective application" to be proceeded with without delay.

Appellee in this case is convinced that the property bond laws of Louisiana, and similar laws in other states must be given equitable continuity and must be preserved and protected by this Court in doing full justice to all parties concerned, and thus, in serving the highest and most "compelling state interest."

In final conclusion we repeat for emphasis that whether a full hearing is granted upon the merits of this case or not, the Court should as soon as possible enter a per curiam ruling affirming the doctrine of non-retroactivity as it is to be applied to property tax bond cases, including the present, immediately loosing the hands of state political subdivisions, in Louisiana and elsewhere, to continue to fulfill vital functions related to education, health and public welfare generally.

Respectfully submitted,

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CERTIFICATE

I, undersigned counsel for Respondent, Police Jury of the Parish of Tangipahoa, Louisiana, the governing authority of Road District No. 505 of Tangipahoa Parish, Louisiana, do hereby certify that a copy of the foregoing brief has been served on all counsel in this matter by depositing a copy thereof in the United States Mail, Postage prepaid, addressed to each of them at his respective address of record.

This _____ day of _____, 1970.

_____

EXHIBIT A

THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS
December 19, 1969

CRAWFORD C. MARTIN
Attorney General

Mr. W. E. Tinsley
Executive Director
Municipal Advisory Council
of Texas
Austin, Texas 78701

Dear Mr. Tinsley:

The opinion and order in *Emily Kolodziejski v. City of Phoenix, Arizona, et al.*, in the U. S. District Court for Arizona recently has come to the attention of the Attorney General. While this opinion is neither clear in its meaning nor in its significance for Texas constitutional and statutory voter classifications, as they pertain to general obligation bond elections, it has in the minds of some, cast a shadow of doubt on the validity of **any** such voter classifications.

It is the Attorney General's understanding that the case will be appealed to the Supreme Court. Hopefully the Court will issue an opinion which will clarify the situation in a way that will enable Texas municipalities and other political subdivisions to proceed with confidence in their financing.

Until such time as the federal judiciary sees fit to clarify the confusion created by the opinion in this case, the Attorney General feels obliged to suspend approval of any general obligation issues coming within the deadline and cut-off date set

down in the Cipriano case to which the Phoenix case makes reference. **That is to say, tax bonds authorized by an election wherein the statutory thirty day period for contest day had not expired prior to June 16, 1969,** and where only duly rendered property owning taxpayers were permitted to vote, will not be approved hereafter by the Attorney General until such time as the Federal Courts have clarified their position on the question of voter classification.

This office stands behind the policy set out in its letter of July 10, 1969. We believe the position taken at that time vis a vis the Cipriano and Kramer cases is still the correct one, based on the plain meaning of what the Supreme Court said in those cases. So far as the Attorney General of Texas is concerned, every bond issued under the approving opinion of this office before and since June 16 is a valid and legal obligation.

The risk involved to the people of Texas and its municipalities, in pursuing this position at the present time, however, absent further and more explicit exposition by the Supreme Court of its views on voter classification, is a greater responsibility than this office wishes to assume.

If you have any questions regarding this policy, which is hopefully a temporary measure for safeguarding the credit integrity of the municipalities and people of our State, we shall be happy to hear from you.

Sincerely yours,

s/ Joseph H. Sharpley
Assistant Attorney General

JHS:mh